REMARKS

The Office Action of November 3, 2003 has been received and its contents carefully reviewed. The Applicant would like to thank the Examiner for the consideration given to the above-identified application. Additionally, the Applicant hereby confirms the provisional election to prosecute claims 27-29 and withdraw claims 1-26 from further consideration at this time.

Based on the arguments and amendments herein, reconsideration and allowance of the subject application is respectfully requested.

Claims 27-29 were pending prior to the Office Action of November 3, 2003. Claims 27-29 are currently amended herein. Also, new claims 30-32 are added herein. Support for the amendment to claims 27-29 and the addition of new claims 30-32 can be found throughout the specification, but more specifically, in paragraphs 13-14, 21-24, 27, 31, 35, 38, and 44-45. Thus, claims 27-32 are currently pending in the present application.

Rejection of Claims 27-29 under 35 U.S.C. §101

Claims 27-29 stand rejected under §101 as being directed to non-statutory subject matter. Specifically, the Examiner has asserted that the recited step of receiving a request for downloading digital content...etc. does not apply, involve, use or advance the technological arts since all the steps can't be performed in the mind of a user or by use of pencil and paper and no specific technology (e.g. computer, processor) is expressly recited in the body of the claims. Furthermore, the Examiner asserts that, although the recited method produces a useful, concrete and tangible result, since the claimed invention, as a whole, is not within the technological arts, claims 27-29 are deemed to be directed to non-statutory subject matter.

In response, Applicant herein amends claims 27-29 to further clarify the scope of the invention and to more clearly establish that the invention is more than a mere abstract idea and is directed to statutory subject matter. Specifically, the claims have been amended to recite a "computer readable medium." Such claims are specifically statutory subject matter

pursuant to MPEP 2106. Thus, Applicant asserts that amended claims 27-29 are directed to statutory subject matter under §101 and respectfully requests that the rejection of claims 27-29 under §101 be withdrawn.

Furthermore, newly added claims 30-32 are also clearly directed to statutory subject matter under §101. Specifically, independent claim 30 recites a method for distributing digital works to a computing device, which is clearly directed to statutory subject matter under §101. More specifically, the invention as recited in claim 30 is within the technological arts and produces a useful, concrete, and tangible result. Similarly, new dependent claims 31-32 are also directed to the method for distributing digital works to a computing device by virtue of their dependency on claim 30.

Rejection of Claims 27-29 under 35 U.S.C. §103(a)

Claims 27-29 stand rejected under §103(a) as being unpatentable over Katz et al. (U.S. PG Pub. 2002/0059363, issued as U.S. Pat. No. 6,560,651 on May 6, 2003) in view of Gold et al. (U.S. Pat. No. 6,304,659). Specifically, the Examiner asserts that Katz teaches the method for distributing digital work claimed in former claim 27, but fails to teach associating a flag element with the content data, as formerly recited in claim 27. Therefore, the Examiner asserts that Gold teaches an inventive concept of associating a flag element with the content data, the flag element having memory registers for saving demarcation flags, the registers corresponding to memory addresses of the addressable memory, and manipulating the flag element to place a flag in a memory register corresponding to a memory address indicating a downloaded portion of the content. Thus, the Examiner asserts that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Katz's inventive concept to include Gold's inventive concept of associating a "flag" with the content data.

In response, Applicant herein amends claims 27-29 to further clarify the scope of the invention and to overcome the rejection under §103(a). Thus, Applicant asserts that amended claims 27-29 would not have been obvious to a one of ordinary skill in the art based on Katz in view of Gold, and respectfully requests that the rejection of claims 27-29 under §103(a) be withdrawn.

As described above, independent claim 27 as amended recites a computer readable medium having instructions for effecting a method for distributing digital works, said instructions comprising:

- Instructions for receiving a request for downloading digital content data;

- Instructions for associating a flag element with said content data, said flag element having at least one memory register;

- Instructions for downloading a portion of said content data; and

- Instructions for manipulating said flag element to store at least one demarcation flag in at least one of said memory registers,

- Wherein said memory registers correspond to memory addresses on an addressable memory indicating the downloaded portion of said content data.

Amended claim 27 clearly recites a computer readable medium having instructions for effecting a method for distributing digital works wherein the memory registers correspond to memory addresses on an addressable memory indicating the downloaded portion of said content data. Thus, as amended, claim 27 recites that the demarcation flags of the present invention are used as markers which are associated with portions of digital content data that have been downloaded. For example, the demarcation flags of the present invention can be used to identify which portions of the digital content data have been downloaded and which portions of the digital content data have not been downloaded.

Therefore, when applied in the arts, the instructions of the present invention utilizing the demarcation flags facilitates a flexible and dynamic way to download and manage portions of a digital content data independently of the remaining portions of the digital content data. For example, if there is insufficient memory to store the entire digital content data, the demarcation flags of the present invention allow the user to utilize the portions of the digital content data already downloaded, and later, after completing his use of the downloaded portion of the digital content data, download the remaining portions based on the demarcation flags stored in the memory registers of the flag element of the present invention.

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In brief, the claimed invention utilizes the known concept of flags in a novel way to address known and unsolved problems in the prior art.

Gold discloses the use of a control flag and an address flag included in the structure of an incoming entitlement control message. As shown in Fig. 4 of Gold, the control flag will be either an odd or an even control flag and the conditional access control system 21 will direct the receiver addresses that are constructed into either one of two paths according to the significance of the control flag. The control words and the receiver addresses are passed to the data reception system 24 where the receiver addresses are used to update an odd address register if the associated control flag was odd and an even address register if the associated control flag is even. Moreover, the data reception system 24 receives the datagrams in the data-stream from the demultiplexer 20 including the address flag associated with each datagram. Each incoming datagram has an address flag, the encrypted destination address and the payload of data 27. (Col. 3, ll. 53-54). The address flag represents either an odd or an even datagram destination address which determines how the destination address is processed. After decryption using the control words supplied by the conditional access system 21, the datagrams are passed for comparison with either the dynamic receiver address in the odd address register or the dynamic address registered in the even register. The choice of comparison depends on whether the address flag for the datagram being processed is odd or even. (Col. 3, ll. 39-63).

Katz discloses a computer network based digital information library system employing authentication and encryption protocols for the secure transfer of digital information library programs to a client computer system and a mobile digital information playback device removably connectable to the client computer system. Moreover, Katz discloses a computer network based library and information delivery system for accessing and obtaining selected digital information files. The library and information delivery system comprises: 1) a library server having a plurality of digital information files; 2) a client computer system coupled to the library server over a network; and 3) a mobile device removably connectable to the client computer system, the client computer system including logic for requesting a download of a selected one or more of the digital information files from the library server, the client computer system further including logic for downloading the

selected one or more of the digital information files to the mobile device. (See Abstract in Katz)

The "flags" disclosed by Gold are utilized in a system for distributing encrypted signals to receivers. The flags are used to compare the receiver address and the destination address. There is no suggestion in Gold to utilize flags as anything other than a even / odd rights verification tool. Furthermore, there are no teachings in Gold that would render the inventive concepts of the present invention, for example, to utilize demarcation flags to identify which portions of a digital content data have been downloaded and which portions of the digital content data have not been downloaded, obvious to one of ordinary skill in the art.

Moreover, even in the unlikely event that a person of ordinary skill in the art were to apply the "flags" of Gold to the computer network based digital information library system of Katz, it would not have been obvious in any way to utilize the simple even / odd control flags and address flags of Gold in a manner that achieved the innovative, flexible, and dynamic technique of the present invention to download and manage portions of a digital content data independently of the remaining portions of the digital content data using demarcation flags. Further, Katz fails to address the problem of tracking downloaded portions of data.

Thus, the teaching of Katz in light of Gold do not render the present invention as recited by amended claim 27 obvious to a person of ordinary skill in the art. Therefore, Applicant respectfully requests that the rejection of claim 27 under §103(a) be withdrawn. Similarly, Applicant respectfully requests that the rejection of amended claims 28-29 under §103(a) be withdrawn by virtue of their dependency on amended claim 27.

Similarly, Applicant asserts that, for the reasons stated above, among others, the combination of Katz and Gold would also not render new claims 30-32 obvious under §103(a) to a person of ordinary skill in the art. Thus, Applicant respectfully requests that the rejections of claims 27-29 under §101 and §103(a) be withdrawn. Furthermore, Applicant asserts that amended claims 27-29 and new claims 30-32 are in condition for immediate allowance.

In view of the foregoing, it is submitted that the present application is in condition for immediate allowance and a notice to that effect is respectfully requested. However, if the Examiner deems that any issue remains after considering this response, he is invited to call the undersigned to expedite the prosecution and work out any such issue by telephone.

Respectfully submitted,

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